IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1524 OF 2006

Balasaheb Genbhau Gawade ..Petitioner

versus

Babusaheb Dattatraya Bhondave ..Respondent

Ms. L. Panchakshari for the Petitioner.

Mr. S. V. Sadavarte for the Respondent.

CORAM : D. G. DESHPANDE, J.

DATE : 7TH MARCH, 2007

P.C. :

1. Heard Advocate for the Petitioner and the Respondent.

2. Rule. By consent, Rule returnable forthwith.

3. The petitioner has challenged the order dated 28.9.2005, which was passed by the Court on the basis of the Commissioner's Report dated 2.2.2005. Objection of the petitioner - defendant is that the Commissioner so appointed i.e. Advocate

Mr. Y. S. Chavan was the junior of the Advocate for the respondent. In any case whenever the Commissioner is appointed in such matters, both the parties get a right to raise their objections to the report of the Commissioner. Objection has been raised by the petitioner of the above nature and therefore it will be better in the interest of both the parties that fresh Commissioner is appointed for the same purpose for which the original Commissioner was appointed.

4. In the result petition is allowed. Impugned order dated 28.9.2005 passed below Exhibit 50 in R.C.S. No. 992/2003 is set aside. Trial Court to appoint Commissioner in this matter, again. Commissioner to be appointed should be totally an independent person and as far as possible the court to appoint the Commissioner by mutual consent of the parties. Other terms of reference to the Commissioner to remain the same or the court may add to some of them according to the requirements of the parties. Rule answered accordingly.

5. Parties to act on an authenticated copy of this Order.

(D.G. DESHPANDE, J.)